

Department of Veterans Affairs

§ 3.340

obtained from recognized medical schools, universities, clinics or medical institutions with which arrangements for such opinions have been made, and an appropriate official of the institution shall select the individual expert(s) to render an opinion.

(b) *Requests.* A request for an independent medical opinion in conjunction with a claim pending at the regional office level may be initiated by the office having jurisdiction over the claim, by the claimant, or by his or her duly appointed representative. The request must be submitted in writing and must set forth in detail the reasons why the opinion is necessary. All such requests shall be submitted through the Veterans Service Center Manager or Pension Management Center Manager of the office having jurisdiction over the claim, and those requests which in the judgment of the Veterans Service Center Manager or Pension Management Center Manager merit consideration shall be referred to the Compensation Service or the Pension and Fiduciary Service for approval.

(c) *Approval.* Approval shall be granted only upon a determination by the Compensation Service or the Pension and Fiduciary Service that the issue under consideration poses a medical problem of such obscurity or complexity, or has generated such controversy in the medical community at large, as to justify solicitation of an independent medical opinion. When approval has been granted, the Compensation Service or the Pension and Fiduciary Service shall obtain the opinion. A determination that an independent medical opinion is not warranted may be contested only as part of an appeal on the merits of the decision rendered on the primary issue by the agency of original jurisdiction.

(d) *Notification.* The Compensation Service or the Pension and Fiduciary Service shall notify the claimant when the request for an independent medical opinion has been approved with regard to his or her claim and shall furnish the claimant with a copy of the opinion when it is received. If, in the judgment of the Secretary, disclosure of the independent medical opinion would be harmful to the physical or mental health of the claimant, disclosure shall

be subject to the special procedures set forth in § 1.577 of this chapter.

(Authority: 38 U.S.C. 5109, 5701(b)(1); 5 U.S.C. 552a(f)(3))

[55 FR 18602, May 3, 1990, as amended at 79 FR 2100, Jan. 13, 2014]

§ 3.329 [Reserved]

§ 3.330 Resumption of rating when veteran subsequently reports for Department of Veterans Affairs examination.

Such ratings will be governed by the provisions of § 3.158, “Abandoned Claims,” and § 3.655, “Failure to report for Department of Veterans Affairs examination.” The period following the termination or reduction for which benefits are precluded by the cited regulations will be stated in the rating. If the evidence is insufficient to evaluate disability during any period following the termination or reduction for which payments are not otherwise precluded, the rating will contain a notation reading “Evidence insufficient to evaluate from _____ to _____.”

CROSS REFERENCE: Failure to report for Department of Veterans Affairs examination. See § 3.655.

[29 FR 3623, Mar. 21, 1964]

§§ 3.331–3.339 [Reserved]

§ 3.340 Total and permanent total ratings and unemployability.

(a) *Total disability ratings—(1) General.* Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation. Total disability may or may not be permanent. Total ratings will not be assigned, generally, for temporary exacerbations or acute infectious diseases except where specifically prescribed by the schedule.

(2) *Schedule for rating disabilities.* Total ratings are authorized for any disability or combination of disabilities for which the Schedule for Rating Disabilities prescribes a 100 percent evaluation or, with less disability, where the requirements of paragraph 16, page 5 of the rating schedule are present or where, in pension cases, the